SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 398

ROY BUTE, PETITIONER,

vs.

PEOPLE OF THE STATE OF ILLINOIS

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

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[fol. 1] Caption Omitted

[fol. 2]

IN THE SUPREME COURT OF ILLINOIS, NOVEMBER TERM, 1946

No. 29887

PEOPLE OF THE STATE OF ILLINOIS, Defendant in Error,

vs.

ROY BUTE, Plaintiff in Error

Error to Circuit Court, LaSalle County

Honorable Robert E. Larkin, Judge Presiding

MOTION FOR LEAVE TO SUE AS A POOR PERSON FOR WRIT OF ERROR WITHOUT PAYMENT OF COSTS AND FOR LEAVE TO FILE EIGHT TYPEWRITTEN ABSTRACTS & BRIEFS—Filed October 10, 1946

Roy Bute, the plaintiff in error in the above cause, appearing pro se, respectfully states to the Court the following:

1. That in cause number 40158 in the Circuit Court of LaSalle County he was sentenced to serve a term of one to twenty years in the penitentiary for the crime of Indecent Liberties.

2. That said sentence was imposed on June 20, 1938.

3. That he wishes to sue out a writ of error to review the proceedings in the Circuit Court of LaSalle County in said cause number 40158.

4. That he is a poor person without sufficient funds to pay costs of this Court or to furnish the required number of printed abstracts and briefs.

Wherefore, Roy Bute respectfully moves this Court for leave to sue as a poor person for writ of error without payment of costs and for leave to file eight typewritten abstracts and briefs.

Respectfully Submitted, Roy Bute, #13883, Box 1112, Joliet, Illinois.

[fol. 3] *Duly sworn to by Roy Bute; jurat omitted in printing.*

[fol. 4] IN THE SUPREME COURT OF ILLINOIS, NOVEMBER TERM, 1946,

PEOPLE OF THE STATE OF ILLINOIS, Defendant in Error,

vs.

ROY BUTE, Plaintiff in Error

Error to Circuit Court, LaSalle County

Honorable Robert E. Larkin, Judge Presiding

MOTION FOR LEAVE TO SUE AS A POOR PERSON FOR WRIT OF ERROR WITHOUT PAYMENT OF COSTS AND FOR LEAVE TO FILE EIGHT TYPEWRITTEN ABSTRACTS & BRIEFS—Filed October 10, 1946

Roy Bute, the plaintiff in error in the above cause, appearing pro se, respectfully states to the Court the following:

1. That in cause number 40159 in the Circuit Court of LaSalle County he was sentenced to serve a term of one to twenty years in the penitentiary for the crime of Indecent Liberties.

2. That said sentence was imposed on June 20, 1938.

3. That he wishes to sue out a writ of error to review the proceedings in the Circuit Court of LaSalle County in said cause number 40159.

4. That he is a poor person without sufficient funds to pay costs of this Court or to furnish the required number of printed abstracts and briefs.

Wherefore, Roy Bute respectfully moves this Court for leave to sue as a poor person for writ of error without payment of costs and for leave to file eight typewritten abstracts and briefs.

Respectfully submitted, Roy Bute, #13883, Box 1112, Joliet, Illinois.

[fol. 5] *Duly sworn to by Roy Bute; jurat omitted in printing.*

[fol. 6] [File endorsement omitted.]

[fol. 7] IN SUPREME COURT OF ILLINOIS

[Title omitted]

ORDER GRANTING LEAVE TO FILE PETITION FOR WRIT OF ERROR WITHOUT PAYMENT OF COSTS, ETC.—November 22, 1946

And now on this day, the Court having duly considered the motion by plaintiff in error for leave to file a writ of error herein as a poor person and for leave to file eight typewritten copies of abstract and brief, and being fully advised in the premises,

The motion is allowed and leave is granted plaintiff in error to file a petition for writ of error without the payment of costs, and petitioner is ruled to file record, abstract and brief on or before twenty days before the first day of the next term of Court. Leave to withdraw petition is granted, if requested before the record is filed.

It is further ordered by the Court that leave be granted plaintiff in error to file eight typewritten copies of abstract and brief herein.

[fol. 8] And afterwards, to-wit: on the sixth day of December, 1946, the same being one of the days in vacation after the term of Court aforesaid, there was filed in the office of the Clerk of the Supreme Court an authenticated copy of the common law record of the circuit court of La-Salle County, which is in the words and figures following, to-wit:

[fol. 9] Caption in Cause No. 40158 omitted.

[fol. 10] IN CIRCUIT COURT OF LA SALLE COUNTY

JOURNAL ENTRY—June 13, 1938

Naw at 1:30 o'clock P. M. on this the first day of the said June Term, A. D. 1938 of the Circuit Court aforesaid, there are present as heretofore written, and the Court is opened by Proclamation according to law.

Whereupon there is returned into open Court the venire including the first five names of the supplemental venire, heretofore issued out of and under the seal of the said Circuit Court of La Salle County, Illinois, from which it appears by the return of the Sheriff endorsed thereon that the

following named persons have been duly summoned to appear before this Court on this day to serve as Grand Jurors at the present term of this Court, viz: Wm. Hall, Chas. Morrell, Julius Pitts, Jess Olson, Marie Benedetti, Chas. Rosling, W. H. Stockley, H. G. Harms, Henry Thies, Alex Leberton, Mike Cusick, Frank Palmer, Arthur Henning, James Bailey, Ralph C. Woodward, Frank H. Steinbach, Jr., Anthony Arnold, Charles Cleer, Joseph Shawback, Joe Daley, Charles Wilkins, W. P. Rose, Fraeme Currie, Chas. Denzine, Chas. E. Black, Elmer Mackey, Louis Turchi, Paul A. Schmidt:

And the said Grand Jury being now called answer to their respective names and give their attendance upon the Court. Whereupon Henry Thies, Mike Cusick, Charles Cleer, Graeme Currie, Chas. Denzine, Chas. E. Black and Elmer Mackey showing good cause to the Court are excused from service herein by the Court.

[fol. 11] And it appearing to the Court for good cause shown that the regular panel of Grand Jurors is not full, it is therefore ordered that the Sheriff select at random seven (7) persons from the supplemental Grand Jury list to act as Grand Jurors on the present panel.

It is therefore ordered by the Court that the Grand Jurors who are present be excused, to report at 10 o'clock tomorrow morning.

[fol. 12] In Circuit Court of La Salle County

Hon. Robert E. Larkin, Presiding

Journal Entry—June 14, 1938

Now at 1:30 o'clock P. M., on this day come the Grand Jurors heretofore chosen herein, together with Emmett Nagle and Wm. Murry, selected from the supplemental panel to serve as Grand Jurors.

Thereupon the Court appoints Ralph Woodward as foreman of the Grand Jury.

Whereupon the foreman and said Grand Jurors are each duly sworn as the law directs and are instructed by the Court as to their duties as Grand Jurors and thereupon retire to their room in charge of an officer duly sworn to consider of indictments and such matters as may be brought before them.

[fol. 13] In Circuit Court of La Salle County

Indictment—Filed June 17, 1938

Hon. Robert E. Larkin, Presiding

Now on this day the same being one of the days of the regular June Term of the Circuit Court of La Salle County, Illinois for the year aforesaid, come the Grand Jurors into open Court and by their foreman present to the Court the following indictments as true bills:

40158

The People of the State of Illinois

vs.

Roy Bute

Indictment for Taking Indecent Liberties with Children

A True Bill

[fol. 14] State of Illinois,
La Salle County, ss:

Of the June Term of the La Salle County Circuit Court, in the year of our Lord 1938.

The Grand Jurors, Chosen, selected and sworn, in and for the County of La Salle, in the name and by the authority of the People of the State of Illinois, upon their oaths present: That Roy Bute late of said County, on to wit: the 19th day of May in the year of our Lord one thousand nine hundred and thirty-eight at and within the said County of La Salle, the said Roy Bute being a male person of the age of seventeen (17) years and upwards, did then and there unlawfully and feloniously take certain immoral, improper and indecent liberties with a certain female child, under the age of fifteen (15) years, and of the age of eight (8) years, to-wit, Irene Reeland, with intent of arousing, appealing to and gratifying the lust, passion and sexual desires of him the said Roy Bute contrary to the form of the statute in such case made and provided, and against the peace and dignity of the same People of the State of Illinois.

And the Grand Jurors aforesaid, chosen, selected and sworn, in and for the County of La Salle aforesaid, in the name and by the authority of the People of the State of

Illinois, upon their oaths aforesaid, do further present: That the said Roy Bute late of said County, on to wit: the 19th day of May in the year of our Lord one thousand nine hundred and thirty-eight at and within the said County of La Salle, the said Roy Bute being a male person of the age of seventeen (17) years and upwards did then and there unlawfully and feloniously attempt to take certain immoral, improper and indecent liberties with a certain female child under the age of fifteen (15) years and of the age of (8) years, to-wit, Irene Reeland, by then and there taking down the pants of the said Irene Reeland and attempting to play with the private parts of her the said Irene Reeland, with the intent of arousing, appealing to and gratifying the lust, passion and sexual desires of him the said Roy Bute, but that he, the said Roy Bute, failed in his said attempt, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the same People of the State of Illinois.

(Signed) Taylor E. Wilhelm, State's Attorney in and for said County of La Salle.

[fol. 15] [Endorsed]: No. 40158. June Term, A. D. 1938. La Salle County Circuit Court. The People of the State of Illionis vs. Roy Bute. Indictment for Taking Indecent Liberties with Children. A True Bill. Signed: Ralph C. Woodward, Foreman of the Grand Jury. Witnesses: Dorothy Reeland, Harry Reynolds, Norma Jean Thew, Robert Rierson, Frank Kouser, John Hopkins, Donald Decker. Bail fixed at $10,000. Sgd. R. E. L., Judge. Filed June 17, A. D. 1938. Sgd. Edw. T. Ryan, Clerk.

[fols. 16-17] IN CIRCUIT COURT OF LA SALLE COUNTY

Hon. Robert E. Larkin, Presiding

40158

THE PEOPLE OF THE STATE OF ILLINOIS

vs.

ROY BUTE

Indictment for Taking Indecent Liberties with Children

A True Bill

ORDER FIXING BAIL—June 20, 1938

Now on this day it is ordered by the Court that bail herein be, and the same is hereby fixed at Ten Thousand ($10,000.00) Dollars.

[fol. 18] IN CIRCUIT COURT OF LA SALLE COUNTY

Hon. Robert E. Larkin, Presiding

40158

THE PEOPLE OF THE STATE OF ILLINOIS

vs.

ROY BUTE

Indictment for Taking Indecent Liberties with Children

A True Bill

ARRAIGNMENT AND PLEA OF GUILTY—June 20, 1938

Now on this day come the said People by Taylor E. Wilhelm, State's Attorney, and the said defendant in his own proper person also comes; Whereupon the said defendant is furnished with a copy of the indictment, a list of witnesses and jurors herein.

And the said defendant being now arraigned before the bar of this Court moves the Court for leave to enter his plea

of Guilty of the crime of taking indecent liberties with children in manenr and form as charged in the first count of the indictment herein; and the Court having admonished and explained to the said defendant the consequences and penalties, which will result from said plea, and the said defendant still persisting in his desire to enter his plea of guilty to the crime of taking indecent liberties with children, in manner and form as charged in the first count of the indictment herein, the court grants such leave.

[fol. 19] Thereupon the said defendant enters his plea of guilty of the crime of taking indecent liberties with children, in manner and form as charged in the first count of the indictment herein.

Thereupon the Court finds the age of the said defendant to be fifty-seven (57) years.

JUDGMENT

Now again on this day come the said People by Taylor E. Wilhelm, State's Attorney, and the said defendant Roy Bute, in his own proper person also comes, and the said defendant, Roy Bute, not saying anything further why the judgment of the Court should not now be pronounced against him on his plea of guilty of the crime of taking indecent liberties with children in manner and form as charged in the first count of the indictment herein, heretofore entered herein.

Whereupon it is Ordered by the Court that the said defendant, Roy Bute, be and he is hereby sentenced on said plea of guilty as aforesaid to confinement in the Illinois State Penitentiary at Joliet for a period of not less than one (1) year, nor more than twenty (20) years.

Therefore, It Is Ordered and Adjudged by the Court that the said defendant, Roy Bute, be taken from the bar of this Court to the common jail of La Salle County, from whence he came, and from thence by the Sheriff of said La Salle County to the Penitentiary of this State of Joliet, and be delivered to the Warden or Keeper of said Penitentiary, and the said Warden or Keeper is hereby required and commanded to take the body of said defendant, Roy Bute, and confine him in said Penitentiary in safe and secure custody, or on parole, from and after the delivery [fol. 19a] hereof for a period of not less than one (1) year,

nor more than twenty (20) years, and until discharged by the Prison Board as authorized and directed by law.

Thereupon by leave of Court first had and obtained, the State's Attorney enters Nolle Prosequi as to the second count of the indictment herein.

[fol. 20] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 21] [Caption in Cause No. 40159 omitted.]

[fols. 22-24] Journal entries showing selection of Grand Jury omitted. Printed side page 10 ante.

[fol. 25] IN CIRCUIT COURT OF LA SALLE COUNTY

INDICTMENT—Filed June 17, 1938

Hon. Robert E. Larkin, Presiding

Now on this day the same being one of the days of the regular June Term of the Circuit Court of La Salle County, Illinois for the year aforesaid, come the Grand Jurors into open Court and by their foreman present to the Court the following indictments as true bills:

40159

THE PEOPLE OF THE STATE OF ILLINOIS

vs.

ROY BUTE

Indictment for Taking Indecent Liberties With Children

A True Bill

[fol. 26] STATE OF ILLINOIS,
La Salle County, ss:

Of the June Term of the La Salle County Circuit Court, in the year of our Lord 1938.

The Grand Jurors, Chosen, selected and sworn, in and for the County of La Salle, in the name and by the authority of the People of the State of Illinois, upon their oaths present: That Roy Bute late of said County, on to wit: the 19th day of May in the year of our Lord one thousand nine hundred and thirty-eight at and within the said County of La Salle, the said Roy Bute being a male person of the age of seventeen (17) years and upwards, did then and there unlawfully and feloniously take certain immoral, improper and indecent liberties with a certain female child, under the age of fifteen (15) years, and of the age of eleven (11) years, to-wit, Dorothy Reeland, with intent of arousing, appealing to and gratifying the lust, passion and sexual desires of him the said Roy Bute contrary to the form of the statute in such case made and provided, and against the peace and dignity of the same People of the State of Illinois.

And the Grand Jurors aforesaid, chosen, selected and sworn, in and for the County of La Salle aforesaid, in the name and by the authority of the People of the State of Illinois, upon their oaths aforesaid, do further present: That the said Roy Bute late of said County, on to wit: the 19th day of May in the year of our Lord one thousand nine hundred and thirty-eight at and within the said County of La Salle, the said Roy Bute being a male person of the age of seventeen (17) years and upwards did then and there unlawfully and feloniously attempt to take certain immoral, improper and indecent liberties with a certain female child under the age of fifteen (15) years and of the age of eleven (11) years, to-wit, Dorothy Reeland, by then and there taking down the pants of the said Dorothy Reeland and attempting to play with the private parts of her the said Dorothy Reeland, with the intent of arousing, appealing to and gratifying the lust, passion and sexual desires of him the said Roy Bute, but that he, the said Roy Bute, failed in his said attempt, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the same People of the State of Illinois.

(Signed) Taylor E. Wilhelm, State's Attorney in and for Said County of La Salle.

[fol. 27] [Endorsed:] No. 40159. June Term, A. D. 1938. La Salle County Circuit Court. The People of the State of Illinois vs. Roy Bute. Indictment. For Taking Indecent Liberties with children. A True Bill. Signed: Ralph C. Woodward, Foreman of the Grand Jury. Witnesses: Dorothy Reeland, Harry Reynolds, Irene Reeland, Norma Jean Thew, Robert Rierson, Frank Kouser, John Hopkins, Donald Decker. Bail fixed at $10,000. Sgd: R. E. L., Judge. Filed June 17, A. D. 1938. Sgd: Edw. T. Ryan, Clerk.

[fol. 28] In Circuit Court of La Salle County

Hon. Robert E. Larkin, Presiding

#40159

The People of the State of Illinois

vs.

Roy Bute

Indictment for Taking Indecent Liberties With Children

A True Bill

Order Fixing Bail—June 20, 1938

Now on this day it is ordered by the Court that bail herein be, and the same is hereby fixed at Ten Thousand ($10,000.00) Dollars.

[fol. 29] In Circuit Court of La Salle County

Hon. Robert E. Larkin, Presiding

#40159

The People of the State of Illinois

vs.

Roy Bute

Indictment for Taking Indecent Liberties With Children

A True Bill

Arraignment and Plea of Guilty—June 20, 1938

Now on this day come the said People by Taylor E. Wilhelm, State's Attorney, and the said defendant in his own proper person also comes; Whereupon the said defendant is furnished with a copy of the indictment, a list of witnesses and jurors herein.

And the said defendant being now arraigned before the bar of this Court moves the Court for leave to enter his plea of Guilty of the crime of taking indecent liberties with children in manner and form as charged in the first count of the indictment herein; and the Court having admonished and explained to the said defendant the consequences and penalties, which will result from said plea, and the said defendant still persisting in his desire to enter his plea of guilty to the crime of taking indecent liberties with children, in manner and form as charged in the first count of the indictment herein, the court grants such leave.

[fol. 30] Thereupon the said defendant enters his plea of guilty of the crime of taking indecent liberties with children, in manner and form as charged in the first count of the indictment herein.

Thereupon the Court finds the age of the said defendant to be fifty-seven (57) years.

Judgment

Now again on this day come the said People by Taylor E. Wilhelm, State's Attorney, and the said defendant Roy Bute, in his own proper person also comes, and the said defendant, Roy Bute, not saying anything further why the

judgment of the Court should not now be pronounced against him on his plea of guilty of the crime of taking indecent liberties with children in manner and form as charged in the first count of the indictment herein, heretofore entered herein.

Whereupon it is Ordered by the Court that the said defendant, Roy Bute, be and he is hereby sentenced on said plea of guilty as aforesaid to confinement in the Illinois State Penitentiary at Joliet for a period of not less than one (1) year, nor more than twenty (20) years.

Therefore, It Is Ordered and Adjudged by the Court that the said defendant, Roy Bute, be taken from the bar of this Court to the common jail of La Salle County, from whence he came, and from thence by the Sheriff of said La Salle County to the Penitentiary of this State at Joliet, and be delivered to the Warden or Keeper of said Penitentiary, and the said Warden or Keeper is hereby required and commanded to take the body of said defendant, Roy Bute, and confine him in said Penitentiary in safe and secure custody, [fol. 31] or on parole, from and after the delivery hereof for a period of not less than one (1) year, nor more than twenty (20) years, and until discharged by the Prison Board as authorized and directed by law.

This sentence to be separate and in addition to and not concurrently with Indictment Number 40158.

Thereupon by leave of Court first had and obtained, the State's Attorney enters Nolle Prosequi as to the second count of the Indictment herein.

[fols. 32-34] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 35] IN THE SUPREME COURT OF ILLINOIS, JANUARY TERM, 1947

No. 29887

PEOPLE OF THE STATE OF ILLINOIS, Defendant in Error,

vs.

ROY BUTE, Plaintiff in Error

Error to Circuit Court La Salle County

Honorable Robert E. Larkin, Judge Presiding

Abstract of Record—Filed December 6, 1946

CAUSE No. 40158

Placita.

June 14, 1938, Grand Jurors duly sworn, instructed, and retire to consider of indictments and such matters as may be brought before them.

June 17, 1938, Grand Jurors present a true bill in cause number 40158.

Indictment number 40158.

Count 1: The Grand Jurors present that Roy Bute on May 19, 1938, at and within the County of La Salle, the said Roy Bute being a male person of the age of seventeen years and upwards, did then and there unlawfully and feloniously take certain immoral, improper and indecent liberties with a certain female child, under the age of fifteen years, and of the age of eight years, to-wit, Irene Reeland, with intent of arousing, appealing to and gratifying the lust, passion and sexual desires of him the said Roy Bute, contrary to the statute, etc.

[fol. 36] Count 2: The Grand Jurors further present that Roy Bute on May 19, 1938, at and within the County of La Salle, the said Roy Bute being a male person of the age of seventeen years and upwards did then and there unlawfully and feloniously attempt to take certain immoral, improper and indecent liberties with a certain female child under the age of fifteen years and of the age of eight years, to-wit, Irene Reeland, by then and there taking down the pants of the said Irene Reeland and attempting to play with the private parts of her the said Irene Reeland, with the intent

of arousing, appealing to and gratifying the lust, passion and sexual desires of him the said Roy Bute, but that he, the said Roy Bute, failed in his said attempt, contrary to the statute, etc.

June 20, 1938.

Now on this day come the said People by Taylor E. Wilhelm, State's Attorney, and the said defendant in his own proper person also comes; Whereupon the said defendant is furnished with a copy of the indictment, a list of witnesses and jurors herein.

And the said defendant being now arraigned before the bar of this Court moves the Court for leave to enter his plea of Guilty of the crime of taking indecent liberties with children in manner and form as charged in the first count of the indictment herein; and the Court having admonished and explained to the said defendant the consequences and penalties, which will result from said plea, and the said defendant still persisting in his desire to enter his plea of guilty to the crime of taking indecent liberties with children, in manner and form as charged in the first count of the indictment herein, the court grants such leave.

[fol. 37] Thereupon the said defendant enters his plea of guilty of the crime of taking indecent liberties with children, in manner and form as charged in the first count of the indictment herein.

Thereupon the Court finds the age of the said Defendant to be fifty-seven (57) years.

Now again on this day come the said People by Taylor E. Wilhelm, State's Attorney, and the said defendant Roy Bute, in his own proper person also comes, and the said defendant, Roy Bute, not saying anything further why the judgment of the Court should not now be pronounced against him on his plea of guilty of the crime of taking indecent liberties with children in manner and form as charged in the first count of the indictment herein, heretofore entered herein.

Whereupon it is Ordered by the Court that the said defendant, Roy Bute, be and he is hereby sentenced on said plea of guilty as aforesaid to confinement in the Illinois State Penitentiary at Joliet for a period of not less than one (1) year, nor more than twenty (20) years.

Therefore, It Is Ordered and Adjudged by the Court that the said defendant, Roy Bute, be taken from the bar of this

Court to the common jail of La Salle County, from whence he came, and from thence by the Sheriff of said La Salle County to the Penitentiary of this State at Joliet, and be delivered to the Warden or Keeper of said Penitentiary, and the said Warden or Keeper is hereby required and commanded to take the body of said defendant, Roy Bute, and confine him in said Penitentiary in safe and secure custody, or on parole, from and after the delivery hereof for a period of not less than one (1) year, nor more than twenty (20) years, and until discharged by the Prison Board as authorized and directed by law.

[fol. 38] Thereupon by leave of court first had and obtained the State's Attorney enters Nolle Prosequi as to the second count of the indictment herein.

Certification of the Clerk of the Circuit Court of La Salle County.

CAUSE No. 40159

Placita.

June 14, 1938, Grand Jurors duly sworn, instructed, and retire to consider of indictments and such matters as may be brought before them.

June 17, 1938, Grand Jurors present a true bill in cause number 40159.

Indictment number 40159.

Count 1: The Grand Jurors present that Roy Bute on May 19, 1938, at and within the County of La Salle, the said Roy Bute being a male person of the age of seventeen years and upwards, did then and there unlawfully and feloniously take certain immoral, improper and indecent liberties with a certain female child, under the age of fifteen years, and of the age of eleven years, to-wit, Dorothy Reeland, with intent of arousing, appealing to and gratifying the lust, passion and sexual desires of him the said Roy Bute, contrary to the statute, etc.

Count 2: The Grand Jurors further present that Roy Bute on May 19, 1938, at and within the County of La Salle the said Roy Bute being a male person of the age of seventeen years and upwards did then and there unlawfully and feloniously attempt to take certain immoral, improper and indecent liberties with a certain female child under the age of fifteen years and of the age of eleven years, to-wit, Dorothy Reeland, by then and there taking down the

[fol. 39] pants of the said Dorothy Reeland and attempting to play with the private parts of her the said Dorothy Reeland with the intent of arousing, appealing to and gratifying the lust, passion and sexual desires of him the said Roy Bute, but that he, the said Roy Bute, failed in his said attempt, contrary to the statute, etc.

June 20, 1938.

Now on this day come the said People by Taylor E. Wilhelm, State's Attorney, and the said defendant in his own proper person also comes; Whereupon the said defendant is furnished with a copy of the indictment, a list of witnesses and jurors herein.

And the said defendant being now arraigned before the bar of this court moves the court for leave to enter his plea of guilty of the crime of taking indecent liberties with children in manner and form as charged in the first count of the indictment herein; and the court having admonished and explained to the said defendant the consequences and penalties, which will result from said plea, and the said defendant still persisting in his desire to enter his plea of guilty to the crime of taking indecent liberties with children in manner and form as charged in the first count of the indictment herein, the court grants such leave.

Thereupon the said defendant enters his plea of guilty of the crime of taking indecent liberties with children in manner and form as charged in the first count of the indictment herein.

Thereupon the court finds the age of the said defendant to be fifty-seven (57) years.

[fol. 40] Now again on this day come the said People by Taylor E. Wilhelm, State's Attorney, and the said defendant Roy Bute, in his own proper person also comes, and the said defendant, Roy Bute, not saying anything further why the judgment of the court should not now be pronounced against him on his plea of guilty of the crime of taking indecent liberties with children in manner and form as charged in the first count of the indictment herein, heretofore entered herein.

Whereupon it is Ordered by the court that the said defendant, Roy Bute, be and he is hereby sentenced on said plea of guilty as aforesaid to confinement in the Illinois State Penitentiary at Joliet for a period of not less than one (1) year, nor more than twenty (20) years.

Therefore, It is ordered and adjudged by the court that the said defendant, Roy Bute, be taken from the bar of this court to the common jail of La Salle County from whence he came and from thence by the Sheriff of said La Salle County to the penitentiary of this state at Joliet and be delivered to the warden or keeper of said penitentiary, and the said warden or keeper is hereby required and commanded to take the body of said defendant Roy Bute and confine him in said penitentiary in safe and secure custody, or on parole, from and after the delivery hereof for a period of not less than one (1) year nor more than twenty (20) years, and until discharged by the Prison Board as authorized and directed by law.

[fol. 41] This sentence to be separate and in addition to and not concurrently with Indictment Number 40158.

Thereupon by leave of court first had and obtained the State's Attorney enters Nolle Prosequi as to the second count of the indictment herein.

Certification of the Clerk of the Circuit Court of La Salle County.

ERRORS RELIED UPON FOR REVERSAL

1. Defendant was denied representation by counsel as guaranteed by state and federal constitutions.

2. Defendant was denied due process and equal protection guaranteed by state and federal constitutions because the trial court did not advise him of his rights and of his right to have the assistance of counsel.

3. Defendant was denied a fair and impartial trial as guaranteed by state and federal constitutions because the statute requiring him to state on oath that he is unable to procure counsel before the court is empowered to appoint counsel places the duty of knowing his right to counsel and of claiming such right on the defendant, thereby rendering said statute unconstitutional and violative of Article 2, Sections 2, 9, 10, 19, and 20 of the state constitution, and violative of the due process and equal protection clauses of the 14th amendment to the federal constitution, and because it creates a favored class of those accused who know the law and discriminates against and creates another class of those who do not know the law.

4. Defendant was deprived of a fair and impartial trial as guaranteed by state and federal constitutions because he

was rushed to trial with such expedition as to deprive him of such trial.

5. Defendant was denied due process and equal protection guaranteed by state and federal constitutions because sentence of imprisonment was imposed without the trial court making a finding of guilt.

6. Defendant was denied due process and equal protection guaranteed by state and federal constitutions because sentence of imprisonment was imposed on a plea and for an offense not charged in the indictment.

Respectfully submitted, Roy Bute, No. 13883, Box 1112, Joliet, Illinois, Plaintiff in Error Appearing Pro Se.

Earl Nicholson on Brief.

[fols. 42-43] IN SUPREME COURT OF ILLINOIS

[Title omitted]

ORDER OF SUBMISSION—January 20, 1947

Now on this day come the parties hereto and this being one of the days set apart for the call of the docket under the rules of this Court, and it appearing to the Court that plaintiff in error hath filed herein a duly certified common law record of the court below, together with typewritten abstracts thereof, and brief and argument in support of the errors assigned herein, and entered motion to reverse the judgment and remand said cause and for costs, and the said defendant in error having entered motion to affirm said judgment and for costs and procedendo, and said motions being taken under advisement for final hearing, and the Clerk of this Court reporting that said cause is now ready to be taken, and said cause is here submitted for the consideration and judgment of the Court:

Therefore it is ordered by the Court that this cause be and the same is hereby taken under advisement.

[fol. 44] IN SUPREME COURT OF ILLINOIS

Docket No. 29887—Agenda 12—January, 1947.

THE PEOPLE OF THE STATE OF ILLINOIS, Defendant in Error,

v.

ROY BUTE, Plaintiff in Error

OPINION—Filed March 19, 1947.

MR. JUSTICE WILSON, delivered the opinion of the court:

By two separate indictments returned in the circuit court of La Salle county on June 17, 1938, the defendant, Roy Bute, fifty-seven years of age, was charged with the crime of taking indecent liberties with a child. In the first indictment the child was an eight-year-old girl; in the second an eleven-year-old girl. On June 20, 1938, the defendant was duly arraigned and entered a plea of guilty to both indictments. Defendant was thereupon sentenced to imprisonment in the penitentiary for a term of from one to twenty years on each indictment, the sentences to run consecutively and not concurrently. Appearing *pro se*, Bute prosecutes this writ of error. No bill of exceptions has been filed.

Defendant first contends that he was denied representation by counsel. The common-law record discloses neither an attempt to appear and defend by counsel nor a request that the court assign counsel to conduct the defense. There is no showing that defendant was denied representation by counsel of his own choosing and, in the absence of a request, there was no duty upon the court to appoint counsel for him. *People* v. *Russell*, 394 Ill. 192; *People* v. *Stack*, 391 Ill. 15; *People* v. *Fuhs*, 390 Ill. 67; *People* v. *Childers*, 386 Ill. 312.

Defendant next complains that the trial court did not advise him of his right to have the assistance of counsel and asserts that an affirmative waiver of the right to counsel must appear upon the face of the record. The right to be heard by counsel is guaranteed by section 9 of article II of our constitution. The right to have counsel appointed by the court is granted by statute. (Ill. Rev. Stat. 1945, chap. 38, par. 730.) Defendant's argument relates solely to the right to have the assistance of counsel appointed

by the court. There is no mandatory constitutional requirement that counsel be assigned to an accused. Indeed, due process under the fourteenth amendment to the Federal constitution does not require that counsel be assigned to accused, even where requested. (*Betts* v. *Brady*, 316 U. S. 455.) Our statute provides that when a person charged with a crime shall state upon oath that he is unable to procure counsel the court shall assign him competent coun-[fol. 45] sel. (Ill. Rev. Stat. 1945, chap. 38, par. 730.) We have repeatedly held that the right to representation by counsel is personal to a defendant and may be waived or claimed as he himself elects, and that no duty rests upon the court to provide legal assistance for an accused unless he states upon oath his inability to procure counsel. (*People* v. *Russell*, 394 Ill. 192; *People* v. *Brauer*, 389 Ill. 100; *People* v. *Corrie*, 387 Ill. 587; *People* v. *Corbett*, 387 Ill. 41.) Nor is there any requirement, constitutional or statutory, that the court advise defendant of his rights under the statute. (*People* v. *Corrie*, 387 Ill. 587; *People* v. *Lavendowski*, 326 Ill. 173; *People* v. *Kawoleski*, 310 Ill. 498.) Furthermore, there is no requirement that the waiver of the statutory right to counsel appear upon the face of the judgment order. In the absence of a showing in the record to the contrary, the presumption obtains that the court discharged its duty to the defendant in all respects. *People* v. *Fuhs*, 390 Ill. 67; *People* v. *Corbett*, 387 Ill. 41.

The third error assigned as ground for reversal is that the statute relating to the appointment of counsel in criminal cases violates both the State and Federal constitutions because it places on a defendant the duty to know of his right to counsel and discriminates against those who do not know the law in favor of those who are conversant with the statute. This question was not raised in the trial court and it cannot be raised for the first time in a court of review. *People* v. *Berglin*, 309 Ill. 488.

Defendant next asserts that he was rushed to trial with such expedition as to deprive him of a fair trial. The indictments were presented on June 17, 1938, and on the third day thereafter defendant was arraigned, pleaded guilty and sentenced. This cause being here on the common-law record, the extent of our inquiry is circumscribed by what that record contains. (*People* v. *Burnett*, 395 Ill. 179; *People* v. *Conn*, 391 Ill. 190.) Since there is no indication in the record that defendant either requested or was re-

fused additional time within which to prepare his defense, the contention is without merit. *People* v. *Foster,* 394 Ill. 194; *People* v. *Russell,* 394 Ill. 192; *People* v. *Street,* 353 Ill. 60.

Defendant further contends that the sentence of imprisonment is illegal because it was imposed without the trial court making a finding of guilt. It will be observed that defendant entered a plea of guilty. Under such circumstances, it follows, as a legal inference, that the court [fol. 46] finds the defendant guilty and it is not necessary for the court to enter such finding. *People* v. *Werner,* 364 Ill. 594; *Hoch* v. *People,* 219 Ill. 265. See: *People* v. *Andrae,* 295 Ill. 445; *People* v. *Rave,* 392 Ill. 435.

Lastly, defendant urges reversal on the ground that he was sentenced for the offense of taking indecent liberties with children, an offense not charged in the indictments. In the first count of each indictment defendant is charged with taking indecent liberties with a child—not with children. Defendant's objection is hypercritical. Moreover, the judgment orders, so far as pertinent, read: "Thereupon the said defendant enters his plea of guilty of the crime of taking indecent liberties with children in manner and form as charged in the first count of the indictment herein." The law does not require specific repetition and it is sufficient that the judgment order recites a plea of guilty in manner and form as charged in a particular count of the indictment. *People* v. *Wooten,* 392 Ill. 468; *People* v. *Jensen,* 392 Ill. 72; *People ex rel. Hutchinson* v. *Murphy,* 188 Ill. 144.

The judgments of the circuit court of La Salle county are affirmed.

Judgments affirmed.

[fols. 47-48] IN SUPREME COURT OF ILLINOIS

No. 29887

PEOPLE STATE OF ILLINOIS, Defendant in Error,

vs.

ROY BUTE, Plaintiff in Error

Error to Circuit Court La Salle County (40158-40159)

JUDGMENT—March 19, 1947

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the judgments aforesaid, is there anything erroneous, vicious or defective, and in that record there is no error.

Therefore, it is considered by the Court that the judgments of the circuit court of La Salle County aforesaid, Be Affirmed in All Things and Stand in Full Force and Effect, notwithstanding the said matter and things therein assigned for error.

[fol. 49] IN THE SUPREME COURT OF ILLINOIS

[Title omitted]

PETITION FOR REHEARING—Filed April 8, 1947

Now comes Roy Bute, the plaintiff in error, and respectfully petitions the Court for a rehearing in the above cause, and states in support thereof that the Court overlooked and misapprehended the law involved as follows:

In its opinion the Court stated that there is no mandatory constitutional requirement that counsel be assigned to an accused and that due process under the 14th amendment to the Federal constitution does not require that counsel be assigned to an accused; even where requested. The Court further stated that there is no requirement, constitutional

or statutory, that the trial court advise a defendant of his rights, and that there is no requirement that the waiver of the statutory right to counsel appear upon the face of the record.

It is respectfully submitted that well considered opinions of the Supreme Court of the United States and of other Federal courts hold otherwise.

In *U. S. ex rel. Hall v. Ragen*, 60 F. Supp. 820, the third branch of the syllabus states as follows:

> [fol. 50] "The fundamental right of assistance of counsel in criminal prosecution is guaranteed in the federal courts by the Sixth Amendment and in state courts by the Fourteenth Amendment."

In *Powell v. Alabama*, 287 U. S. 45, 53 S. Ct. at page 65, the Supreme Court of the United States said, in speaking of the 14th amendment:

> "* * * it is the duty of the court, whether requested or not, to assign counsel for him as a necessary requisite of due process of law * * *"

In the very recent case of *DeMeerleer v. Michigan*, 67 S. Ct. 596, the Supreme Court of the United States said:

> "The record indicates that petitioner was without legal assistance throughout all these proceedings and was never advised of his right to counsel * * * At no time was assistance of counsel offered or mentioned to him * * * Under the holdings of this Court, petitioner was deprived of rights essential to a fair hearing under the Federal Constitution."

In *Johnson v. Zerbst*, 304 U. S. 458, the Supreme Court of the United States said:

> "The purpose of the constitutional guaranty of a right to counsel is to protect an accused from conviction resulting from his own ignorance of his legal and constitutional rights, and the guaranty would be nullified by a determination that an accused's ignorant failure to claim his rights removes the protection of the Constitution."

In the *Johnson v. Zerbst* case, supra, the Court further held that a waiver of the constitutional right to assistance of counsel at a criminal trial should appear in the record.

Such a waiver affirmatively appears in the record submitted to this Court in the case of *People v. Carter*, 391 Ill. 594, and we quote from that record as follows:

> "* * * Thereupon the Court fully explained to the Defendant Harice Leroy Carter commonly known as Roy Carter the consequence of such plea and of all his rights in the premises including the right to have a lawyer appointed by the Court to defend him and also of his right to a trial before a jury of twelve jurors sworn in open Court and of the degree of proof that would be required to justify a verdict of guilty against him under the plea of not guilty but the defendant [fol. 51] Harice Leroy Carter commonly known as Roy Carter persists in his desire to plead guilty and for a plea says he is guilty in manner and form as charged in the indictment."

On the foregoing record, the Supreme Court of the United States, in *Carter v. Illinois*, 67 S. Ct. 216, said:

> "A fair reading of the judgment against Carter indicates a judicial attestation that the accused, with his rights fully explained to him, consciously chose to dispense with counsel."

In the recent case of *People v. Creviston*, 396 Ill. 78, we find the following:

> "The record shows that plaintiff in error entered a plea of guilty to the charge of robbery as charged in the indictment; that the court, before accepting the plea, fully advised him of his legal rights and admonished him of the consequences of his plea: * * *"

Because of the foregoing we sincerely believe this Honorable Court misapprehended and misstated the law in its opinion in the instant case.

In the *Carter* case, supra, the record submitted to this Court shows not only that the trial court advised the defendant as to his constitutional right to have a lawyer appointed, but also advised him as to other constitutional rights—and it shows further that Carter consciously and

knowingly waived such rights and persisted in pleading guilty. The record in the *Crowiston* case, supra, shows that he was advised of his rights. And we submit that the records in both of these cases shows a compliance with the requirements of the 14th amendment as stated in many cases by the Supreme Court of the United States. Both records show that the defendants were advised of their rights and that they waived their rights.

The instant case is on another footing. The record in the instant case shows only that the court admonished the defendant as to the penalty that would result from his plea of guilty. (Abst. 2, 5, Rec. 8, 19) It fails to show that defend-[fol. 52] ant was advised of his constitutional right to have counsel, and it fails to show a waiver of such right. Such waiver should appear in the record. *Johnson v. Zerbst*, supra.

Wherefore, the record in this case fails to show a compliance with constitutional due process as announced in many cases by the Supreme Court of the United States, the final arbiter of what constitutes due process, and it appears that the opinion of this Court runs clearly counter to applicable decisions of the Supreme Court of the United States.

Consequently, a rehearing should be allowed and on such rehearing this cause should be reversed.

In concluding this portion of our petition for rehearing we respectfully suggest that the record in the case at bar indicates that the defendant was without legal assistance throughout the proceedings against him. He was confronted by serious and complicated criminal charges and nothing was said in his defense. The record is silent as to the court advising him of his right to counsel. At no time was assistance of counsel offered or mentioned to him. He was ignorant of his right to have counsel appointed to defend him, and the effect of this Honorable Court's opinion is that his ignorant failure to claim his right to have counsel appointed for him removes the protection of the Constitution.

In other words, this Court says that a defendant in Illinois has no rights if he ignorantly fails to claim them.

This surely can not be the law. The Supreme Court of the United States says it is not the law. This Court should be governed by what the Supreme Court of the United States has said. And a rehearing should be allowed.

[fol. 53] The Court disposed of our third assignment of error by stating that the question was not raised in the trial court and it can not be raised for the first time in a court of review.

Our third assignment of error deals with the statute, *Ill. Rev. Stat.* Ch. 38, Sec. 730, and we complained that such portion of the statute as required the defendant to state upon oath that he was unable to procure counsel before the court was empowered to appoint counsel for him was unconstitutional in that it effectively circumvented a defendant's constitutional right to have the assistance of counsel if he was ignorant of the statutory requirement.

We further complained that the statute wrongfully places on a defendant the duty of knowing the law—that the statute creates a favored class of those accused who know the law and who are thereby favored with representation by counsel appointed by the court, and discriminates against and creates another class of those accused who do not know the law and who are thereby denied their right to have counsel appointed. Such complaint, we think, involves a constitutional question of the highest importance—it involves the due process and equal protection clauses of the 14th amendment to the Federal constitution—and the statute is clearly violative of the 14th amendment.

Yet this Court says that the question can not be considered because it was not raised in the trial court.

We respectfully suggest that if plaintiff in error had known enough law to raise this constitutional question in the trial court, he would also have known that he must state on oath his inability to procure counsel, and he could then have enjoyed the assistance of counsel. The Court has disposed of this important question by application of a mere technical rule, which rule should fall in the face of the con-
[fol. 54] stitution. The Court has disposed of this important question by imputing fault to the defendant's ignorance of legal procedure.

Wherefore, the Court should allow a rehearing, ignore the technical rule, and decide the constitutionality of the statute involved.

Respectfully submitted, Roy Bute, #13883, Box 1112, Joliet, Illinois, Plaintiff in Error, Pro Se.

Earl Nicholson, On Petition.

[fol. 55] IN SUPREME COURT OF ILLINOIS

[Title omitted]

ORDER DENYING REHEARING—May 19, 1947

And now on this day the Court having duly considered the petition for rehearing filed herein, and being now fully advised of and concerning the premises, doth overrule the prayer of the petition and denies a rehearing herein.

[fol. 56] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 57] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1947

No. 17, Misc.

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS—October 13, 1947

On Consideration of the motion for leave to proceed herein *in forma pauperis*,

It Is Ordered by this Court that the said motion be, and the same is hereby, granted.

[fol. 58] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1947

No. 17, Misc.

ORDER ALLOWING CERTIORARI—Filed October 13, 1947

The petition herein for a writ of certiorari to the Supreme Court of the State of Illinois is granted, and the case is ordered transferred to the appellate docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied

the petition shall be treated as though filed in response to such writ.

Endorsed on cover: Enter Petitioner pro se. In forma pauperis (granted 10/13/47). Vide 17 Misc. File No. 52,628. Illinois Supreme Court. Term No. 398. Roy Bute, Petitioner, vs. People of the State of Illinois. Petition for writ of certiorari and exhibit thereto. Filed July 5, 1947. Term No. 398, O. T. 1947.